



**CONTAINS CONFIDENTIAL BUSINESS INFORMATION
NOT SUBJECT TO DISCLOSURE UNDER FOIA**

November 7, 2022

By Electronic Mail

Mary E. Greene
Director
Air Enforcement Division
Office of Civil Enforcement
U.S. Environmental Protection Agency
William Jefferson Clinton Building
1200 Pennsylvania Avenue, NW
Mail Code: 2201A
Washington, DC 20460

Re: November 2022 Force Majeure Update for Response to April 24, 2020 Letter from the U.S.
Environmental Protection Agency

Dear Ms. Greene:

Birla Carbon USA, Inc. (“Birla” or the “Company”) submits this letter as the thirtieth update to its May 22, 2020 response to the April 24, 2020 letter it received from the U.S. Environmental Protection Agency (“EPA” or the “Agency”). This update relates to force majeure notices the Company submitted on March 16 and 18, 2020, in anticipated noncompliance with obligations under the Consent Decree between the United States of America, the Louisiana Department of Environmental Quality (“LDEQ”), the Kansas Department of Health and Environment (“KDHE”), and Columbian Chemicals Company. Consent Decree, *United States et al. v. Columbian Chem. Co.*, No. 6:17-cv-01661-RGJ-CBW (W.D. La. June 11, 2018). Additionally, this update covers the force majeure notice submitted on September 8, 2022, regarding the Hickok facility.

Please note that this letter and certain attachments to this letter include confidential business information (“CBI”) and are marked as such. Documents marked for CBI are entitled to confidential treatment under 40 C.F.R. Part 2, Subpart B, and are not subject to disclosure under the Freedom of Information Act

("FOIA"), 5 U.S.C. § 552. We ask that LDEQ and KDHE similarly treat this as CBI under their analogous state laws.¹

I. North Bend

Commissioning work continues at North Bend for the installed equipment required under the Consent Decree. Additionally, Birla's application to modify North Bend's Title V operating permit to include consent decree applicable requirements remains under review by LDEQ.

Since our last update, ongoing equipment issues have prevented final stack testing. Repairs are expected during the week of November 7, 2022, which should allow for stack testing the week of November 14, 2022. *See Confidential Attachment 1.* The vent scrubber system remains delayed due to late equipment deliveries and supply chain issues. Birla currently estimates that the reactor vent scrubber system may be completed in the first half of 2023. *See Confidential Attachment 1.*

Birla and the Engineer of Record are working to improve the schedule wherever possible, and are working with vendors to mitigate the potential impact of any delays in shipment. Birla continues to note that the projected completion date remains fluid.

II. Hickok

Since our September 2022 force majeure notice for Hickok,² Birla has worked with contractors to determine the best approach for remediating or replacing damaged equipment. The repairs will include evaluation of the stack and ductwork, replacement or remediation of the stack, and remediation of the ductwork. *See Confidential Attachment 2.*

Bidding contractors are scheduled to visit the site on November 10, 2022. Birla currently estimates that overall repairs will take five to 13 months from the beginning of work. *See Confidential Attachment 2.* Birla is currently making every effort to expedite all efforts to bring the stack back online as soon as possible.

We will update you with more details as they become available. Please contact David Buente at 202-255-8684 or dbuente@sidley.com if you have any questions in the meantime.

Sincerely,



Randy Waskul
Global Director, Health, Safety & Environmental

¹ Certain attachments to this letter include CBI, which Birla has designated as such with the stamp "CONFIDENTIAL BUSINESS INFORMATION NOT SUBJECT TO DISCLOSURE UNDER FOIA." Birla will submit CBI materials via mail to LDEQ and not electronically. *See La. Admin. Code tit. 33, pt. I, § 501(A).*

² Kansas State I.D. No. 0670007.

CC: Kellie Ortega, U.S. EPA (by email)
Patrick Foley, U.S. EPA (by email)
Chris Williams, U.S. EPA (by email)
Carlos Evans, U.S. EPA Region 6 (by email)
Emad Shahin, U.S. EPA Region 6 (by email)
Bill Peterson, U.S. EPA Region 7 (by email)
Tracey Casburn, U.S. EPA Region 7 (by email)
Alex Chen, U.S. EPA Region 7 (by email)
Cassandra Mance, U.S. EPA Region 7 (by email)
Thomas Mariani, U.S. DOJ (by email)
Eli Quinn, U.S. DOJ (by email)
Connie Ellis, KDHE (by email)
Kate Gleeson, KDHE (by email)
Deidre Johnson, LDEQ (by FedEx)
David Buente, Sidley Austin LLP (by email)
Marshall Morales, Sidley Austin LLP (by email)

Enclosures: Confidential Attachment 1 – 2022-11-04 – North Bend – Letter from Engineer of Record

Confidential Attachment 2 – 2022-11-04 – Hickok Update

CONFIDENTIAL ATTACHMENT 1

2022-11-04 – North Bend – Letter from Engineer of
Record

Attn: Mark B. Vannice, PE, Project Director
Birla Carbon USA, Inc.
Regional Office Marietta
1800 West Oak Commons Ct
Marietta, GA 30062

Letter: BC-030

Re: Purchase Order No. 2300002188; Notice of Force Majeure Event Update – Status as of November 3RD , 2022

Dear Mr. Vannice:

Reference is made the above Purchase Order and the Professional Services Terms and Conditions (Agreement) and Letters BC-001 dated May 13th, 2020, and BC-002 dated June 17th, 2020. Terms not otherwise defined herein shall have the meaning assigned to them in the Agreement.

In accordance with Article 12(a) of the Agreement Engineer is providing Owner an update to the Force Majeure Event notice of May 13th, 2020. The Force Majeure Event is primarily the domino effect of uncontrolled delays and disruption of the global supply chain the Owner is experiencing from its Vendors supplying material and equipment to the Facility project; and secondarily the potential delay caused by disruptions in the available services to, and mobility of, Engineers' staff. The delays and disruptions to the supply chain as we are informed by notices from the Vendors to you are caused by impacts of the COVID-19 epidemic on the manufacture of materials and equipment. These delays are outside the control and without the fault of Engineer. To the extent these delays experienced by the Vendors affects the timely delivery of our Work that depends on inputs of information and ultimately delivery to the Facility in accordance with the Schedule, we are, or likely will be, seeking extensions on the Schedule for a time reasonably necessary to overcome the effect of the delay and additional compensation as appropriate. We are to the extent possible undertaking reasonable measures to make up for time lost caused by the delay and assisting Owner, to the extent possible, mitigating Vendor impacts.

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Mr. Mark Vannice

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As of November 3rd, 2020, we are informed by Owner's Vendor [REDACTED] that they are incurring delays of anywhere from two (2) to four (4) months for various components of the AQCS due to the lack of access to manufacturing facilities in connection with the restrictions related to the COVID-19 virus. Additionally, the absorber manufacturer contracted by [REDACTED], [REDACTED], has issued [REDACTED] a Force Majeure claim as of March 2nd, claiming a two week delay due to the extreme cold weather event in February and Covid impacts. Delays in delivery of [REDACTED] equipment have directly affected the project schedule. Currently we are still awaiting the VFDs for the combustion blower motors, which is directly impacting progress.

In addition, Owner's Vendor [REDACTED] delayed their hydrotest dates until January 18th and 29th, 2021, causing a delay of the delivery of the HRSG until March 3rd, 2021. This was over two months past the original delivery date.

A new priming system skid was sourced after the original vendor backed out of their contract due to the death of the company Principal and Covid 19 impacts. The new vendor, [REDACTED], delivered the skid in August of 2021, an approximate slip of more than four months over the original delivery date of April 1st.

Additionally, the entire North Bend plant was evacuated the week of August 24^h, 2020, due to two named storms, Hurricane Laura and Tropical Storm Marco.

Also, the entire North Bend facility was evacuated again October 8th – 11th, 2020 for Hurricane Delta. This evacuation had initially delayed the piling contractor [REDACTED] and they had issued a Force Majeure notice for this event. The piling is now complete, and this has been incorporated into the current schedule.

Another extreme weather event that impacted the project was the record cold in February 2021. The site was closed Feb 15th – 17th due to local roads being closed restricting access to the site. Additionally, we did close the site a few days in April due to lightning, but contractors worked Saturdays to mitigate.

On August 27th, 2021, the site began preparing for Hurricane Ida. The site was evacuated August 28th through the 30th. The trade contractors were not able to restaff the job fully immediately due to large portions of their staff having been directly impacted by the hurricane and that were not able to return immediately after the storm. Additionally, the reduced availability and higher prices for fuel and accommodations in the area affected the availability of craft labor.

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These potential delays by the Vendors and the weather-related evacuations and closures of the site translates to a corresponding delay affecting the Engineer's Schedule that is also outside the control and without fault of Engineer. Engineer is taking every effort to overcome or mitigate the potential delays and will keep you informed as further information becomes available, so that we can work together cooperatively to address any problems that may arise on your Facility project.

The AQCS project schedule was significantly impacted by Hurricane Ida. Ida had a significant effect on the availability of manpower. The impact from Ida has delayed the project by at least 4 weeks. The execution of the outages was rearranged to mitigate the lost time due to Ida.

The AQCS CEMS certification was completed on June 13th. The final certification report has been received from [REDACTED]. [REDACTED] made corrections to the burners during the August 16th outage. [REDACTED] has now commissioned both duct burners. Ongoing existing equipment problems with the SDI system are preventing the final stack testing. SDI system repairs should be completed early next week. If the system operates reliably next week, stack testing could begin the week of November 14th.

The vent scrubber project is experiencing delays due to late equipment deliveries. The delivery of the scrubbers provided by [REDACTED] was impacted the Covid 19 pandemic in India. The scrubbers have been received and are on site. The current estimated Vent Scrubber completion date is now the first half of 2023. Birla and [REDACTED] are working to improve the schedule wherever possible. There are supply chain issues with the new ignitors and associated BMS control equipment as well as the DCS hardware. Both are of concern due to the global IC chip shortage. We are working with both vendors to ascertain and improve the availability. The DCS cabinets are on site, power up is scheduled for Nov. 28th. The BMS controllers are [REDACTED]. The vendor, [REDACTED], is working with them to expedite delivery. [REDACTED] is aware that Birla is under Consent Decree. The first Preferred BMS panels are scheduled to deliver to site the week of December 12th. The new reactor ignitors and associated BMS are required to safely operate the reactors with the new [REDACTED] Scrubbers.

We continue to monitor the situation and will keep the Owner apprised of additional delays or improvements as they are discovered.

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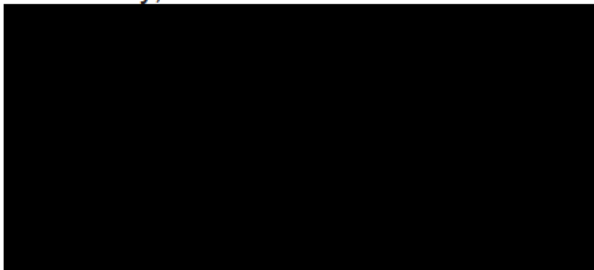
Mr. Mark Vannice

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Please feel free to contact me at [REDACTED] or [REDACTED] if you have any questions.

Sincerely,



cc: Randy Waskul, Birla



CONFIDENTIAL ATTACHMENT 2

2022-11-04 – Hickok Update

Hickok Update 11/4/22

Birla Carbon(BC), is working with the Hickok Air Quality Controls Upgrade Project's EPC contractor, [REDACTED], to determine the best approach to remediate or replace the damaged ductwork from the event on 8/16/22.

Scopes of Work developed

- Evaluation of stack & ductwork
- Replacement of Stack
- Remediation of stack
- Remediation of ductwork

Site meeting with bidding contractors is scheduled for Thursday, 11/10/22.

Estimated duration of remediation activities

Remediation of Ductwork	2 – 3 months
Fabrication of Stack	8 - 10 months (based on discussions with Stack manufacturers)
Installation of Stack	1 month
Installation and curing of refractory	2 months

Estimated Critical Path Duration Timeline 5 – 13 months
Critical path will be driven by the scope of work required to structurally remediate stack to a safe condition

Birla Carbon has also hired independent consultants to perform the following

Design of Ductwork, Stack and Refractory system

- o As designed
- o As installed
- o Current condition

Develop remediation plans independent of EPC contractor [REDACTED], to determine most schedule effective means of remediating ductwork and stack to a safe operational condition.

BC Consultants have made multiple trips to site and are in the process of developing most time effective remediation plan.